Supreme Court, U.S.
FILED

No. 05-474 AUG 10 2005

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IN THE

SUPREME COURT OF THE UNITED STATES

EDWARD BONTKOWSKI

Petitioner,

vs.

RUBEN CASTILLO, ET. AL.,

Respondents,

Petition for Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

# PETITION FOR WRIT OF CERTIORARI

Edward Bontkowski
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Chicago, Illinois 60607

## QUESTIONS PRESENTED

1. Whether the Eleventh Circuit Court of Appeals ruling that Senior Circuit Judge William Bauer is entitled to absolute immunity for his actions in violating Rule 27(c), of the Federal Rules of Appellate Procedure when he entered a one-judge order dismissing Petitioner's direct criminal appeal is inconsistent with this Court's holdings in **Mirales v. Waco**, 502 U.S. 9. 116 L.Ed.2d 9 (1991), and **Nguyen v. United States**, 539 U.S. 69, 156 L.Ed.2d 64 (2003)?

2. Whether the Eleventh Circuit Court of Appeals ruling that federal employees of the Clerk's Office for the United States Court of Appeals for the Seventh Circuit are entitled to absolute immunity for refusing to file Petitioner's papers challenging the unlawful actions of Judge William Bauer is inconsistent with this Court's holdings in **Antione v. Byers & Anderson, Inc.** 508 U.S. 429, 124 L.Ed.2d 391 (1993)?

## PARTIES INVOLVED

All parties who have an interest in the outcome of this case **do not** appear on the caption of the case on the cover. A list of all parties to the proceedings in the court whose judgment is the subject of this petition is as follows:

1. Senior Circuit Court Judge William J. Bauer;

2. Unknown John and Jane Doe Employees of Employees of the Clerk's Office of the United States Court of Appeals for the Seventh Circuit; and,

3. Edward Bontkowski who is presently a federal prisoner serving a nine year term of imprisonment.

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1. The Eleventh Circuit Court of Appeals ruling that Senior Circuit Court Judge William J. Bauer is entitled to absolute immunity for his actions in violating Rule 27(c) of the Federal Rules of Appellate Procedure when he entered a one-judge order dismissing Petitioners direct criminal appeal is inconsistent with **Mirales v. Waco**, 502 U.S. 9, 116 L.Ed. 2d 9, (1991), and **Nguyen v. United States**, 539 U.S. 69, 156 L.Ed.2d 64, (2003).....7

2. The Eleventh Circuit Court of Appeals ruling that employees of the Clerk's Office for the Seventh Circuit Court of Appeals are entitled to absolute immunity for their actions in refusing to file a petition challenging the unlawful actions of Judge Bauer is inconsistent with **Antione v. Byers & Anderson, Inc.**, 508 U.S. 429, 124 L.Ed.2d 391, (1993).....11

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## JUDGMENT BELOW

The unpublished opinion of the United States Court of Appeals for the Eleventh Circuit No. 04-11593-JJ, is attached as Appendix E to this petition.

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## PETITION FOR WRIT OF CERTIORARI

Edward Bontkowski hereinafter referred to as "Petitioner" prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Eleventh Circuit affirming the judgment of United States District Court for the Middle District of Florida, denying Petitioner's Rule 60(b) Motion to vacate judgment.

## JUDGMENT AND OPINION BELOW

The Opinion of the United States Court of Appeals for the Eleventh Circuit is set out in the Appendix at E, and is unreported.

## JURISDICTIONAL STATEMENT

Petitioner invoked the jurisdiction of the United States District Court for Middle District of Florida pursuant to 28 U.S.C. §§ 1331, 1332, and 1342.

Petitioner invoked the jurisdiction of the United States Court of Appeals for the Eleventh Circuit pursuant to 28 U.S.C. § 1291.

Petitioner now invokes this Court's jurisdiction under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment provides for free and equal access to the courts;

The Fifth Amendment guarantees the right not to be deprived of liberty without due process of law;

The right to equal protection of the law guaranteed by the Fourteenth Amendment as incorporated into the Fifth Amendment;

The right to seek redress for constitutional harms caused by federal officials pursuant to 28 U.S.C. § 1331;

The statutory right of every federal criminal defendant to obtain appellate review of his conviction and sentence pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742.

## STATEMENT OF THE CASE

On August 26, 2002, Petitioner paid the required $150.00 filing fee causing a Bivens Type Action to commence wherein he named twenty-nine federal employees as the defendants. These defendants consisted of twenty-one district court or circuit court judges, and eight employees of the United States Department of Justice. The other defendants consisted of John and Jane Does who were employed in the clerk's offices of the district court or the United States Court of Appeals for the Seventh Circuit, and the United States Bureau of Prisons. Petitioner asked to proceed in the action as a class of one under Fed.R.Civ.P. 23 on the grounds that all of the defendants had treated him differently from other persons who were similarly situated without having any rational or lawful reasons for doing so. And that the basis for them doing so was an animus shared by each of the defendants which arose out of the Petitioners's claims in the past that employees of the U.S. Department of Justice had committed criminal acts in the past that caused the Petitioner injuries, (Compl. ¶¶ 1-2).

Additionally, the complaint alleged, inter alia, defendants unlawfully deprived Petitioner of his constitutional rights to equal protection and due process of law by the unlawful actions of a single circuit court judge who entered a one-judge order dismissing Petitioner's direct criminal appeal. And that, this unlawful judicial act had been committed as retaliation for the Petitioner filing a judicial misconduct complaint against U.S. District Court Judge Ruben A. Castillo. (Comp. ¶¶ 77-83). The complaint sought money damages, and also sought an injunction, preventing all of the judicial defendants from considering any future cases related to Petitioner.